HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 776 of 2007

Between:

K. Gangadhar and another

… Appellants

And

The Mandal Revenue Officer,
Vemulawada Mandal,
Karimnagar District and two others

… Respondent

:: J U D G M E N T ::

Counsel for the appellants : Shri M.V. Suresh

20th September, 2007

Per G.S. Singhvi, C.J.

Having failed to persuade the learned Single Judge to entertain their prayer for issue of a mandamus to respondent Nos.1 and 2 to undertake survey of 0.30 guntas of land comprised in Survey No.1783 situated at Vemulavada Village and Mandal, Karimnagar District (hereinafter described as 'the subject land') and to restrain respondent No.3 from undertaking construction of compound wall in the subject land, the appellants have preferred this appeal.

In the writ affidavit filed by him, appellant No.1 averred that he and appellant No.2 purchased the subject land from Smt. N. Pushpa by registered sale deed dated 23-6-2004; that they sold 0.20 guntas out of the subject land and obtained pattadar passbook in respect of the remaining land; that in the year 2006, they filed Writ Petition Nos.18814 of 2006 and 18740 of 2006 for issue of a mandamus to

Vemulavada Gram Panchayat (respondent No.2) to grant permission to them to construct shops, and that the same were disposed of by the learned Single Judge on 27-4-2007 by directing the Gram Panchayat to decide their applications. Appellant No.1 further averred that after decision of the two writ petitions, they submitted an application to Mandal Revenue Officer, Vemulavada for demarcation of the land and for fixing boundaries, but the latter has not taken any action and by taking advantage of the casual attitude of the officer concerned, respondent No.3 has started constructing the compound wall in the subject land.

The learned Single Judge took cognizance of the statement made by the learned Assistant Government Pleader for Revenue (General-T) and the Standing Counsel for the Gram Panchayat that the subject land is government land and is not in possession of the petitioners and dismissed the writ petition vide his order dated 7-8-2007, the relevant portion of which is extracted below:

> "From the above, it becomes clear that there is a dispute of title between the petitioners on one hand and the third respondent on the other hand, who was allegedly allotted the Government land. In such an event, survey/demarcation is not a proper course of action. The remedy of the petitioners is to seek a declaration and injunction either in the civil Court or before the competent Deputy Commissioner of Endowments."

We have heard Sri M.V. Suresh, learned counsel for the appellants and scrutinised the record. In our opinion, the appellants have failed to make out a case for issue of a mandamus to respondent No.1 to undertake survey, demarcation and fixation of boundaries. Section 3(ix) of the Andhra Pradesh Survey and Boundaries Act, 1923 (for short, 'the Survey Act') defines the "Survey Officer" to mean any officer appointed to be a survey officer under Section 4. Section 4 empowers the State Government to appoint any person either by name or by virtue of his office to be a Survey Officer for all or any of the purposes of this Act and specify his jurisdiction within the particular local limits. Section 9 confers power upon the Survey Officer to determine and record as undisputed any boundary in respect of which

no dispute is brought to his notice. Under Section 10(1), the Survey Officer can, after making appropriate enquiry, determine the dispute relating to boundary. Section 11 provides for appeal against orders passed under Section 9 or Section 10. If a person feels aggrieved by the determination of any boundary under Sections 9, 10 or 11, then he can avail remedy by filing civil suit (S.14).

The appellants have neither averred nor the learned counsel could show that his clients filed an application under the Survey Act before a duly appointed Survey Officer for fixation of the boundaries of the disputed land. It is also not the appellants' case that the Mandal Revenue Officer has been appointed as Survey Officer under Section 4 of the Survey Act. Therefore, the Court cannot issue a mandamus to him to undertake survey and demarcation of the subject land.

The question whether respondent No.3 has started construction of a compound wall in the subject land is essentially a question of fact which can be decided by an adjudicatory forum like civil court and not by this Court under Article 226 of the Constitution of India.

For the reasons stated above, we hold that the appellants have failed to make out a case for interference with the discretion exercised by the learned Single Judge not to entertain the writ petition and the writ appeal is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the appeal, WAMP.No.1549 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, C.J.

20th September, 2007.

C.V. NAGARJUNA REDDY, J.

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